



**HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.**

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February 21, 2012

To: Senator Paul Doyle, Co-Chair  
Representative Joseph Taborsak, Co-Chair  
Members of the General Law Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Raised Bill 60, Prohibiting Price Gouging During Severe Weather Events**

The HBA of Connecticut is a professional trade association with about one thousand (1,000) member firms statewide employing tens of thousands of CT's citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. Our members build 70% to 80% of all new homes and apartments in the state each year. **We support the goal, but not the language, of RB 60.**

Most contractors and other businesses are reputable and try to do good quality work for their customers. We represent these contractors and teach consumers how to hire and work with a quality contractor. We have no interest in protecting illegitimate contractors, promoting poor quality work or defending "price gouging" and work to remove these ills from our industry. **However, in an attempt to legislate away "price gouging" RB 60 overreaches by creating vague standards of care, legal and regulatory uncertainty, and a chilling effect on legitimate pricing decisions.**

Under RB 60, the decision on whether a severe weather event emergency exists is based on "an unusually high demand for consumer goods and services." Since often consumer services are needed in anticipation of and during a severe weather event prior to a Governor's pronouncement under this bill, how does a provider of a consumer service or product today know whether the Governor will tomorrow make a determination that "an unusually high demand" occurred the day before?

Also, during a severe weather event, "no person within the chain of distribution of consumer goods and services shall sell or offer to sell consumer goods or services for a price that is unconscionably excessive." In what could not be a more circular definition, the determination of what is "unconscionably excessive" shall be based "among other factors" on whether the price is "unconscionably excessive" or if "there was an exercise of unfair leverage or unconscionable means..." And, what "other factors" would affect this determination? Evidence of this finding can be found in "gross disparity" between the average price of goods and services 30 days prior to a severe weather event and the price related to the severe weather event. But, not knowing when adverse weather is going to occur, who conducts the continually rolling survey or analysis of prices 30 days prior to a severe weather event? How is this to be determined, especially if such goods or

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services are not advertised? If there's a complaint against one provider, how do you access the historical prices of non-party other providers to obtain the average price against which behavior is to be judged? Finally, why are sellers of energy resources exempt from this new market regulation and pricing prohibition? Is it OK for sellers of energy resources to price-gouge customers or is this regulated by other laws of which we're not aware?

Normal forces of supply and demand often produce reasonable (i.e., non price gouging, however defined) market-oriented price fluctuations – this is what makes free markets work. An argument could be made that severe weather events warp the normal forces on buyers and sellers that make up free markets. But, during severe weather events, there could be any number of reasons why prices are legitimately raised on goods or services due to unusually high demand. There could be shortages of supplies or service providers that necessitate extraordinary efforts to produce additional supplies by manufacturers, redistribution or changes in orders by distributors that incur extra costs, extraordinary efforts to transport limited supplies by distributors or retailers that may be impeded by the weather event, or overtime, nighttime, weekend or holiday work that results in employers paying extra for its personnel to provide services during what would be extraordinary, likely difficult, conditions. Yet, the uncertainty and legal risks imposed by the language of RB 60 will chill not only “price gouging” – which is the desired result – but also legitimate business activity necessitated by real-life facts. Businesses may very well decide it's not worth the risk to deliver goods or services during a severe weather event under this law, and simply tell customers they'll have to wait until the Governor's proclamation has ended.

Unfortunately, we do not have an answer on how to legislate out of existence a bad behavior without chilling legitimate and reasonable behavior. Also unfortunately, RB 60 fails this test. We hope chilling all legitimate and reasonable business pricing behavior during severe weather events is not the price you choose for providing relief to those harmed by businesses that charge an unconscionably excessive amount for their goods or services.

**Please consider adopting language that prohibits the offending activity of “price gouging” but that also provides certainty without the threat of legal reprisal to legitimate pricing activity for contractors, suppliers and retailers who provide goods or services to consumers services related to severe weather events. Thank you for considering our comments on this important legislation.**